

SMALL PROCUREMENT - TERMS AND CONDITIONS

1. INCORPORATION BY REFERENCE

All terms and conditions of the solicitation, and any amendments thereto, are made a part of this contract.

2. TAX EXEMPTION

The State is generally exempt from federal excise taxes, Maryland sales and use taxes, District of Columbia sales taxes and transportation taxes. Exemption certificates shall be completed upon request. Where a Contractor is required to furnish and install material in the construction or improvement of real property in performance of a contract, the Contractor shall pay the Maryland sales or use tax, if applicable, and the exemption does not apply.

3. SPECIFICATIONS

All materials, equipment, supplies or services shall conform to federal and State laws and regulations and to the specifications contained in this solicitation.

4. NON-HIRING OF EMPLOYEES

No employee of the State of Maryland, any department, commission, agency or branch thereof whose duties as such employee include matters relating to or affecting the subject matter of this contract shall while so employed, become or been an employee of the party or parties hereby contracting with the State of Maryland or any unit thereof.

5. NON-DISCRIMINATION IN EMPLOYMENT

The Contractor shall comply with the nondiscrimination provisions of federal and Maryland law.

6. FINANCIAL DISCLOSURE

The Contractor shall comply with State Finance and Procurement Article §13-221, Annotated Code of Maryland, which requires that every business that enters into contracts, leases or other agreements with the State and receives in the aggregate \$100,000 or more during a calendar year, shall within 30 days of the time when the \$100,000 is reached, file with the Secretary of State certain specified information to include disclosure of beneficial ownership of the business.

7. POLITICAL CONTRIBUTION DISCLOSURE

The Contractor shall comply with the provisions of Article 33, Sections 30-1 through 30-4, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, a county, or an incorporated municipality, or their agencies, during a calendar year under which the person receives in the aggregate \$100,000 or more, shall file with the State Administration Board of Election Laws a statement disclosing contributions in excess of \$500 to a candidate for elective office in any primary or general election.

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The statement shall be filed with the State Administrative Board of Election Laws: 1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality or their agencies, and shall cover the preceding two calendar years; and 2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on: (a) February 5, to cover the 6-month period ending January 31; and (b) August 5, to cover the 6-month period ending July 31.

8. ANTI-BRIBERY

The Contractor certifies that, to the Contractor's best knowledge, neither the contractor; nor (if the contractor is a corporation or partnership) any of its officers, directors, or partners' nor any employee of the Contractor who is directly involved in obtaining contracts with the State or with any county, city, or other subdivision of the State, has been convicted of bribery, attempted bribery, or conspiracy to bribe under the laws of any state of the United States.

9. REGISTRATION

Pursuant to §7-201 et. seq. of the Corporations and Associations Article of the Annotated Code of Maryland, corporations not incorporated in the State shall be registered with the State Department of Assessments and Taxation, 301 West Preston Street, Baltimore, Maryland 21201, before doing any interstate or foreign business in this State. Before doing any intrastate business in this State, a foreign corporation shall qualify with the Department of Assessments and Taxation.

10. CONTINGENT FEES

The Contractor warrants that it has not employed or retained any person, partnership, or other entity, other than a bona fide employee or agent working for the Contractor, to solicit or secure this agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this agreement.

11. LAWS TO BE OBSERVED

- A. The Contractor shall keep fully informed of all Federal, State, and local laws, ordinances, rules and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed on the work, or which in any way affect the conduct of the work. They shall at all times observe and comply with all such laws, rules, ordinances, regulations, orders and decrees; they shall protect and indemnify the State and its representatives against any such claim or liability arising from or based on the violation of any law, ordinance, regulation, order, or decree, whether by themselves or their employees, subcontractors or suppliers at any tier. Whenever the contract documents require the contractor to comply with provisions of Federal, State, or local laws, regulations, ordinances or codes, contractor must comply whether such laws, regulations, ordinances or codes are expressly incorporated into the contract or not.
- B. The Contractor must comply with the provisions of the Workers' Compensation Act and Federal, State and local laws relating to hours of labor.

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- C. The provisions of this contract shall be governed by the laws of the State of Maryland.
- D. If the Contractor observes that the contract documents are at variance with any applicable law, ordinance or regulation, they shall promptly notify the Procurement Officer, any necessary changes shall be adjusted as provided in the contract for changes in the work. If the Contractor performs any work knowing it to be contrary to such laws, ordinances, rules and regulations, and without such notice, they shall bear all costs arising therefrom.
- E. The State is not responsible for the actions, orders or interpretations of Federal, county, municipal, or other local officials or representatives respecting the application to the work of Federal, State, or local laws, ordinances, regulations or codes. Contractor shall not be entitled to additional compensation for unanticipated costs of complying with any such actions, orders or interpretations.

12. TERMINATION FOR CONVENIENCE

The State may terminate this contract, in whole or in part, without showing cause upon prior written notice to the Contractor specifying the extent and the effective date of the termination. The State shall pay all reasonable costs associated with this Contract that the Contractor has incurred up to the date of termination and all reasonable costs associated with termination of the Contract. However, the Contractor may not be reimbursed for any anticipatory profits which have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2).

13. TERMINATION FOR DEFAULT

If the Contractor does not fulfill obligations under this Contract or violates any provision of this Contract, the State may terminate the Contract by giving the Contractor written notice of termination. Termination under this paragraph does not relieve the contractor from liability for any damages caused to the State. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B.

14. DISPUTES

Disputes arising under this contract shall be governed by State Finance and Procurement Article, Title 15, Subtitle 2, Part III, Annotated Code of Maryland, and by COMAR 21.10 Administration and Civil Remedies. Pending resolution of a dispute, the Contractor shall continue to perform this Contract, as directed by the Procurement Officer.

15. TERMINATION FOR NONAPPROPRIATION

If funds are not appropriated or otherwise made available to support continuation in any fiscal year succeeding the first fiscal year, this contract shall terminate automatically as of the beginning of the fiscal year for which funds are not available. The Contractor may not recover anticipatory profits or cost incurred after termination.

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16. INTELLECTUAL PROPERTY

Contractor agrees to indemnify and save harmless the State, its officers, agents and employees with respect to any claim, action cost or judgement for patent infringement, or trademark or copyright violation arising out of purchase or use of materials, supplies, equipment or services covered by this contract.

17. MARYLAND LAW PREVAILS

The provision of this contract shall be governed by the laws of Maryland.

18. CONTRACTOR INVOICES

Contractor agrees to include on the face of all invoices billed to the State, its Taxpayer Identification Number, which is the Social Security Number for individuals and sole proprietors and Federal Employer Identification Number for all other types of organizations.

19. PRE-EXISTING REGULATIONS

The applicable regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR Title 21) in effect on the date of execution of this Contract are applicable to this Contract.

20. DRUG AND ALCOHOL FREE WORKPLACE

The Contractor warrants that the contractor shall comply with COMAR 21.11.08 Drug and Alcohol Free Workplace, and that the Contractor shall remain in compliance throughout the term of this purchase order.

21. CONTRACTOR'S INSURANCE

The Contractor and its subcontractors shall purchase and maintain comprehensive third party legal liability insurance and other such insurance as is appropriate for the work to be performed on the project. Further, the Contractor be responsible for the maintenance of this insurance whether the work is performed directly by the contractor, by any subcontractor, by any person employed by the contractor or any subcontractor, or by anyone for whose acts the contractor may be liable. This insurance shall include protection for:

- A. Claims arising from Worker's Compensation statutes or similar employee benefit acts, or third-party legal liability claims arising from bodily injury, sickness and disease, or death or contractor's employees. The minimum limits of such coverage shall be as required by law.

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- B. Third-party legal liability claims against the Contractor arising from the operations of the Contractor, subcontractors and suppliers with such protection extended to provide comprehensive coverage, including personal injury, completed operations, explosion and collapse hazard, and underground hazard. The minimum combined limit for personal injury and property damage liability shall be \$1,000,000.00 per occurrence and \$2,000,000 in the aggregate, unless other limits are stated elsewhere in the contract documents.
- C. Third party legal liability claims arising from bodily injury and/or damage to property of others from the ownership, maintenance or use of any motor vehicle, both on site and off site, owned by the Contractor. The minimum combined limit for personal injury and property damage liability shall be: \$1,000,000.00 per occurrence and \$2,000,000 in the aggregate, unless other limits are stated elsewhere in the contract documents.

22. CHANGES

- A. The Procurement Officer unilaterally may, at any time, without notice to the sureties, if any, by written order designated or indicated to be an order, make any change in the work within the general scope of the contract, including but not limited to changes:
 - (1) In the specifications (including drawings and designs);
 - (2) In the method or manner of performance of the work;
 - (3) In the State-furnished facilities, equipment, materials, services, or site; or
 - (4) Directing acceleration in the performance of the work.
- B. Any other written order or an oral order, including a direction, instruction, interpretation, or determination from the Procurement Officer that causes or constitutes any such change shall be treated as a change order under this clause provided that the Contractor gives the Procurement Officer written notice stating the date, circumstances and source of the order and that the Contractor regards the order as a change order.
- C. Except as herein provided, no order, statement, or conduct of the Procurement Officer shall be treated as a change under this clause or entitle the Contractor to an equitable adjustment hereunder.
- D. Subject to paragraph (F) of this subsection, if any change under this clause causes an increase or decrease in the Contractor's cost of, or the time required for, the performance of any part of the work under the contract, whether or not changed by an order, an equitable adjustment shall be made and the contract modified in writing accordingly; provided, however, except for claims based on defective specifications, that no claim for any order under (B) above shall be allowed for any costs incurred more than twenty (20) days before the Contractor gives written notice as therein required; and provided further, that in the case of defective specifications for which the State is responsible, the equitable adjustment shall include any increase cost reasonably incurred by the Contractor in attempting to comply with such defective specifications.

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- E. If the Contractor intends to assert a claim for an equitable adjustment under this Section 22, they shall, within 30 days after receipt of a written order under (A) above, or the furnishing of written notice under (B) above, submit to the Procurement Officer a written statement setting forth the general nature and monetary extent of such claim, unless this period is expressly extended by the Procurement Officer in writing. The statement of claim hereunder may be included in the notice under (B) above.
- F. Each contract modification or change order that affects contract price shall be subject to the prior written approval of the Procurement Officer and other appropriate authorities and to prior certification of the appropriate fiscal authority of fund availability and the effect of the modification or change order on the project budget or the total construction cost. If, according to the certification of the fiscal authority, the contract modification or change order will cause an increase in cost that will exceed budgeted and available funds, the modification or change order may not be made unless sufficient additional funds are made available or the scope of the project is adjusted to permit its completion within the project budget.
- G. No claim by the Contractor for an equitable adjustment hereunder shall be allowed if asserted after final payment is made under this contract.

23. SITE INVESTIGATION

The Contractor acknowledges that they have investigated and satisfied themselves as to the conditions affecting the work, including but not restricted to those bearing upon transportation, disposal, handling and storage of materials, availability of labor, water, electric power, roads and uncertainties of weather, river stages, tides or similar physical conditions at the site, the conformation and conditions of the ground, the character of equipment and facilities needed preliminary to and during prosecution of the work. The Contractor further acknowledges that they have satisfied themselves as to the character, quality and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the State, as well as from information presented by the drawings and specifications made a part of this contract. Any failure by the Contractor to acquaint themselves with the available information may not relieve them from responsibility for estimating properly the difficulty or cost of successfully performing the work. The State assumes no responsibility for any conclusions or interpretations made by the Contractor on the basis of the information made available by the State.

24. SUSPENSION OF WORK

- A. The Procurement Officer unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for a period of time as they may determine to be appropriate for the convenience of the State.

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- B. If the performance of all or any part of the work is for an unreasonable period of time, suspended, delayed, or interrupted by an act of the procurement officer in the administration of this contract, or by their failure to act within the time specified in this contract (or if no time is specified, within a reasonable time), an adjustment shall be made for any increase in the cost of performance of this contract (excluding profit) necessarily caused by an unreasonable suspension, delay, or interruption and the contract modified in writing accordingly. However, no adjustment shall be made under this clause for any suspension, delay, or interruption to the extent (1) that performance would have been so suspended, delayed, or interrupted by any other cause, including the fault or negligence of the Contractor or (2) for which an equitable adjustment is provided for or excluded under any other provision of this contract.
- C. No claim under this clause shall be allowed (1) for any costs incurred more than 20 days before the Contractor shall have notified the Procurement Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order), and (2) unless the claim, in an amount stated, is asserted in writing as soon as practicable after the termination of a suspension, delay, or interruption, but not later than the date of final payment under the contract.

25. DELAYS AND EXTENSIONS OF TIME

The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.

Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers.

26. LIQUIDATED DAMAGES

For each day that the work shall be uncompleted after the contract completion date, as extended by the Procurement Officer, the Contractor shall be liable for liquidated damages in the amount specified in the contract documents. prior to and after expiration of the contract completion time, the State may withhold an amount equal to liquidated damages whenever the progress of construction is such that, due to the fault or responsibility of the Contractor, the Contractor, in the judgement of the State, is behind schedule so as not reasonably to be able to complete the contract on time. Due account shall be taken of excusable delays, any extensions of time reasonably due the Contractor for completion of additional work under change orders, and for delays for which the State is responsible, provided that the Contractor has properly requested time extensions therefor. After submission of a bid, the Contractor may not contest the reasonableness of the amount of liquidated damages stated in the contract.

27. COMMERCIAL NONDISCRIMINATION POLICY

In preparing its bid on this project, the bidder has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in "discrimination" as defined in § 19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland; to wit: discrimination in the solicitation, selection, or commercial treatment of any subcontractor, vendor, supplier, or commercial customer on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination. Without limiting the foregoing, "discrimination" also includes retaliating against any person or other entity for reporting any incident of "discrimination". Without limiting any other provision of the solicitation for bids on this project, it is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid. As part of its bid or proposal, the bidder shall provide to the State a list of all instances within the immediate past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the bidder discriminated against its subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that complaint, including any remedial action taken. As a condition of submitting a bid or proposal to the State, the bidder agrees to comply with the State's Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland."

- A. As a condition of entering into this agreement, upon the Maryland Human Relations Commission's request, and only after the filing of a complaint against the company under Title 19 of the State Finance and Procurement Article, as amended from time to time, the company agrees to: provide to the State within 60 days after the request a truthful and complete list of the names of all subcontractors, vendors, and suppliers that the company has used in the past 4 years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by the contractor on each subcontract or supply contract. The company further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, to provide any documents relevant to any investigation that is requested by the State. The company understands and agrees that violation of this clause shall be considered a material breach of this agreement and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions.
- B. As a condition of entering into this agreement, the company represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, the company may not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this agreement and may result in termination of this agreement, disqualification of the company from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.
- C. As a condition of entering into this agreement, the company represents and warrants that every subcontract it has entered into or will enter into for the performance of any of the work under this agreement shall include a clause identical to paragraph B above."